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No. 793

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

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THE CITY OF NEW YORK,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

March 4, 1943.

Thomas D. Thacher,
Corporation Counsel of the City of New York.

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INDEX.

Citations.

Other Authorities.

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THE CITY OF NEW YORK,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Corporation Counsel of the City of New York, on behalf of the above named Petitioner, a municipal corporation organized and existing under and by virtue of the laws of the State of New York and exercising by virtue of said laws, powers of government over the people of said City, prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit requiring the cause between the above entitled parties to be certified to this Court for determination by it.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. A. §347(a). The final judgment of the Circuit Court of Appeals for the Second Circuit

was entered December 26, 1942, and this petition was filed within three months thereafter.

Opinions Below.

The opinion of the District Court is reported in 45 F. Supp. 226 and is printed at page 384 of the Record. The opinion of the Circuit Court of Appeals is reported in 131 F. 2d 909 and is printed at page 414 of the Record.

Questions Presented.

(1) Whether there was any agreement between the parties.

(2) If there was, was it a valid and enforceable agreement notwithstanding the failure to comply with express requirements of the Charter of the City of New York governing the purchase of real estate by the City.

(3) Was it intended by the Act of the Legislature of the State of New York entitled "An Act authorizing the City of New York to sell and convey to the United States government certain real property within the borough of Manhattan of such city",

> (*a*) to ratify a prior agreement for the purchase of other real estate which was invalid because of failure to comply with the City Charter or
>
> (*b*) to authorize ratification of said invalid agreement by any other agency.

(4) Whether, if given such effect, it is invalid under the Constitution of the State of New York, Art. III, §16 (now §15).

Provision of the State Constitution Involved.

Art. III, §16 (now §15) of the Constitution of the State of New York provides as follows:

> "No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title."

Statutes Involved.

(1)

Various provisions of the Greater New York Charter are pertinent on the question of the invalidity of the so-called agreement. These provisions are summarized with citations in the appendix (p. 14, *infra*).

The many careful safeguards contained in the Charter should be considered as there set forth but the following provisions show the requirements applicable to the acquisition by purchase of sites for public parks and playgrounds.

§ 442a (added by Local Law No. 7 of 1929) provides:

> "Notwithstanding any provision of the Greater New York Charter or any other statute the Comptroller of the City of New York with the approval of the board of estimate and apportionment of said City, and the separate approval of the Mayor is hereby authorized to select sites for public parks and playgrounds in any borough of the City of New York and acquire by purchase or condemnation the property so selected * * *."

§226 provides:

> "Except as otherwise specifically provided, every act of the board of estimate and apportionment shall

be by resolution adopted by a majority of the whole number of votes authorized by this section to be cast by said board. * * * No resolution or amendment of any resolution shall be passed at the same meeting at which it is originally presented unless twelve votes shall be cast for its adoption."

The record contains no resolution of the Board of Estimate and Apportionment.

(2)

The Enabling Act, N. Y. Sess. L. 1931, ch. 39, reads thus (R. 150-151):

"AN ACT authorizing the City of New York to sell and convey to the United States government certain real property within the borough of Manhattan of such city

Became a law February 27, 1931, with the approval of the Governor. Passed, on emergency message by a two-thirds vote

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The city of New York is hereby authorized to sell and convey to the United States government such lands and premises and rights and easements therein located in the area bounded by Foley park; Park street; Pearl street; New street and Duane street in the borough of Manhattan, city of New York, owned by the city of New York as may be required by the United States government.

§2. Such sale and conveyance shall be on such conditions and such terms as in the judgment of the commissioners of the sinking fund shall be deemed proper.

§3. The land so transferred to be used by the United States government for the construction and erection of a new federal court house in and for the southern district of New York, in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site in said borough by the United States government for the construction and erection of a new post office building.

§4. This act shall take effect immediately."

(3)

The Act of Congress (46 Stat. 901) on which the Secretary of the Treasury relied for power to enter into the so-called "agreement" with the City to sell the old court house and post office site reads thus (R. 120):

"In lieu of the alternate provisions contained in the act approved March 4, 1929, for the acquisition of a site to accommodate either the post office, Federal courts, etc., or a site for a building to accommodate the Federal courts, the Secretary of the Treasury is hereby authorized, after the receipt by him of an acceptable offer by the city of New York for the purchase of the courthouse and post office property at Park Row and Broadway, to acquire by purchase, condemnation, or otherwise, the block bounded by Barclay, Vesey and Church Streets and West Broadway, for a site for a building for post office and other Government offices, at a total estimated limit of cost for said site of not to exceed $5,000,000, and a site for a building for the accommodation of the Federal courts at a total estimated limit of cost for said site of not to exceed $2,450,000 and to procure by con-

tract preliminary sketches of said courthouse building developed sufficiently for use as a basis for estimates; the cost of said sketches to be paid from appropriations available for the purpose."

Statement.

In the District Court the United States (plaintiff below) alleged that an agreement had been made between the parties to the effect that the City would purchase the federal court house and post office site in City Hall Park, New York City, from the United States, and that in consideration of the sale the City (1) would pay such part of the cost of a new post office site as the area of the old site bore to the new, and (2) would sell to the United States of America a new court house site in Foley Square for $2,450,000.

Fearful of reliance upon letters exchanged between the Mayor and the Secretary of the Treasury without action by the Board of Estimate and Apportionment necessary under the Charter to establish an agreement binding upon the City, plaintiff went on to allege that the Enabling Act (N. Y. Sess. L. 1931, ch. 39) which authorized the City to sell the Foley Square site (which it owned) to the United States had also ratified an agreement to purchase the site of the old Post Office in City Hall Park. But this Act was passed to authorize the future sale of lands, and could not operate to ratify the past ineffective contract to buy the old site in City Hall Park. Specific performance was prayed for.

The City denied that any binding agreement had ever been entered into; and asserted (R. 14) that if the Enabling Act embraced the ratification of an invalid contract, it was void as contravening N. Y. Const. (1894), Art. III §16 (now §15), which provides:

> "No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title."

The title of the Enabling Act was (R. 150):

> "An Act authorizing the City of New York to sell and convey to the United States government certain real property within the borough of Manhattan of such city."

Yet the Court below has concluded that, under that title, the Commissioners of the Sinking Fund were authorized to consummate a purchase of real property. This conclusion upon which the decision now rests plainly ignores the Constitution of the State.

The District Court found for the plaintiff, and a decree of specific performance was entered. 45 F. Supp. 226. The City was ordered to complete the purchase of the land in question and to pay the Government $4,288,856.66 with interest from October 30, 1937. In its opinion the District Court found the contract valid *ab initio* notwithstanding failure to comply with the Greater New York Charter. Presumptions were relied on to supply proof that essential steps had been taken, whereas the law of the State is that compliance with the Charter provisions must clearly appear.

Defendant appealed to the Circuit Court of Appeals, which entered a judgment of affirmance. 131 F. 2d 909. Although the District Court's finding of compliance with the Charter predicated solely upon presumptions with no proof of any resolution of the Board of Estimate and Apportionment was rejected as improper by the court below and with it the District Court's conclusion of validity *ab initio*, yet the City was held bound because, in the court's

opinion, the Enabling Act above referred to operated to ratify, or to confer on the Commissioners of the Sinking Fund power to ratify, a previously invalid and unenforceable "agreement". The court below said (R. 429-430):

> "Public policy requires that municipal corporations be bound by contracts made by those who undertake to represent them only when such contracts are in fact duly authorized. *Seif* v. *City of Long Beach,* 286 N. Y. 382; 36 N. E. (2d) 630; *Scarborough Properties Corp.* v. *Village of Briarcliff Manor,* 278 N. Y. 370, 16 N. E. (2d) 369. When the due authorization of such a contract is in issue it simply begs the question to presume regularity when the prescribed course has not been followed. Actual and adequate proof that the Board of Estimate and Apportionment did suspend its rules to enable it to act in secret, or so-called executive, session was needed to support the contract's validity in so far as it was dependent upon action by that body."*

Had the court below stopped here, your petitioner would have prevailed. But the court then concluded that the Enabling Act (quoted at pp. 4-5, *supra*) dispensed with action by the Board of Estimate and Apportionment, adding (R. 430-431):

> "In § 3 of the special law it was made clear that the sale of this land to the government was 'in connection with an agreement' for the removal of the old post office building and the acquisition by the govern-

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* It was also necessary to prove that the Board of Estimate and Apportionment, whether acting in executive session or not, did act by adopting a resolution supported by a majority of votes. The best evidence of the adoption of a resolution is the record. No such evidence nor indeed any evidence that any resolution was adopted is in the record.

ment of a new site for the erection of a new post office building. This special act superseded the city's charter, itself but a legislative act subject to amendment by the legislature, *pro hac vice* and gave the commissioners of the sinking fund ample authority to authorize, as they did, the contract under which the sale of the civic center site to the government was made under the terms of the contract for acquisition by the city of the old post office site. The cash paid by the government was not all that it paid for the civic center site. The agreement to relinquish its right to use the old post office site was a part of the consideration. Nor was the city for that entire consideration merely to convey the court house site to the government. It was as a part of the same transaction to pay the government the amount involved in this suit. This was the agreement the commissioners of the sinking fund duly approved and ratified as a part of the terms and conditions of the sale of the civic center site. It was clearly within their power under the special act so to do when that act was passed, as it was, by a two-thirds vote of both houses on an emergency message of the governor."

Three features of the Enabling Act show the distortion of its purposes by the decision below: it gave (1) authority (2) at a future date (3) to sell certain lands. Despite this purpose to which the Act was limited by its own terms, the Circuit Court of Appeals held it was (1) a ratification (direct or vicarious) of a (2) past agreement (3) to buy certain other and different lands.

The decisions of the two courts below were in effect the same. By improper presumptions the District Court found that the Board of Estimate and Apportionment had acted as required although it may only act by Resolution and none

was produced. The Circuit Court of Appeals misconstrued a Special Act embracing but one subject as embracing two where but one was expressed in the title. The Special Act so construed would be unconstitutional. It was not susceptible of the construction necessary to give validity to the agreement upon which the suit is founded. Whichever judgment stands we submit the courts below have quite unwarrantedly set aside the safeguards surrounding the disposition which can lawfully be made of the funds of the City in the purchase of real estate. This presents a question of great importance to the government of the City and of the State of New York.

In *Williams* v. *City of New York*, 118 App. Div. 756 (1st Dept., 1907), affd. without opinion 192 N. Y. 541 (1908), the Court, in dwelling on the need of exacting strict compliance with the forms of law before imposing contractual liability upon the City, said (p. 763):

> "The strict provisions of the Consolidation Act, re-enacted in the charter, were the outgrowth of the experiences of the city a little over a generation ago when its finances were unblushingly and almost openly looted by a conspiracy between public officials and their favored contractors. What has once happened may be repeated.
>
> While in the case at bar there is no suggestion of fraud or impropriety, good motives in the particular case furnish no grounds for weakening the defenses against possible fraud."

Specification of Errors to be Urged.

Your petitioner submits that the Circuit Court of Appeals (*a*) erred in holding that the City of New York was legally bound to purchase the old court house and post

office site in City Hall Park; (*b*) erred in holding that the Enabling Act ratified, or authorized the ratification of, an "agreement" void when made for want of compliance with the Charter; (*c*) erred in failing to hold that the Enabling Act as construed by the court was invalid under Art. III, §16 (now §15) of the State Constitution; (*d*) erred in requiring specific performance of the alleged agreement and (*e*) erred in failing to dismiss the complaint.

Reasons for Allowance of Writ.

The decision of the court below presents an important and serious question of public law. It construes a state statute in such a manner as to render it unconstitutional under the Constitution of the state. It ignores the invalidity of the statute thus construed and predicates judgment on the statute in derogation of the constitutional limitation. All this notwithstanding the fact that the express terms of the statute are open to no such misinterpretation as that adopted in the court below. In this process of error the court below has ignored the policy of the local laws as declared by the highest court of the State and promulgated in its decisions.

This Court has recognized that it is purely a question of local policy of each state to determine the extent and character of the powers which its various political and municipal organizations shall possess and the manner and form in which such powers shall be exercised.

Claiborne County v. *Brooks,* 111 U. S. 400, 410 (1884);

Detroit v. *Osborn,* 135 U. S. 492, 498 (1890).

In suits between the United States and municipalities of the states this rule is strictly enforced in the federal courts against the Government.

> *Arkansas-Missouri Power Co.* v. *City of Kennett,* 78 F. 2d 911 (8th Cir., 1935);*
> *Alameda County* v. *United States,* 124 F. 2d, 611, 617 (9th Cir., 1941).

The court below ignored the rule firmly established in New York that legislative ratification of what was previously unlawful must be found in plain language and cannot be left to uncertain implication.

> *Cox* v. *Mayor of New York,* 103 N. Y. 519, 526 (1886);
> *Matter of Dean,* 230 N. Y. 1, 7 (1920);
> *Kingsley* v. *City of Brooklyn,* 78 N. Y. 200, 206 (1879).

This policy is recognized in the legislative practice of the State. Care is taken to include clear and unequivocal expressions of approval and validation when enacting special acts to cure the illegality of some past transaction. In fact the 1931 Legislature which passed the Enabling Act with which we are concerned used the opening phrase "An Act to legalize * * *" on 17 different occasions. A complete list of legalizing acts is found at page 1973 of the bound volume of session laws for 1931. Quite significantly the Enabling Act on which the Government relies (L. 1931, ch. 39) is not among them.

There is no language importing legislative ratification in the Act. Indeed, there is nothing in the Act to support the

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* A portion of the opinion affecting a companion case was later withdrawn without affecting or modifying the portion of the same opinion which dealt with the *City of Kennett* case. 80 F. 2d 520 (8th Circ., 1935).

conclusion of the court below. Nor does it authorize the Commissioners of the Sinking Fund to ratify any previously invalid agreements.

The need of exacting strict compliance with all the forms of law before imposing contractual liability upon a municipality has often been emphasized in the decisions of the courts of the State.

Williams v. *City of New York,* 118 App. Div. 756, 763 (1st Dept., 1907), aff'd without opinion, 192 N. Y. 541 (1908);

Scarborough Properties Corp. v. *Village of Briarcliff Manor,* 278 N. Y. 370, 375-376 (1938).

See also:

Hepburn v. *Philadelphia,* 149 Pa. St. 335, 339-340, 24 Atl. 279 (1892).

The decision of the court below is in conflict with the State Constitution and with the decisions of the highest court of the State construing and enforcing Article III, §16 (now §15) of the New York State Constitution.

Gaynor v. *Village of Port Chester,* 231 N. Y. 451, 453 (1921);

Matter of Dean, 230 N. Y. 1, 6-7 (1920);

Parfitt v. *Furguson,* 159 N. Y. 111, 116-117 (1899).

Wherefore it is respectfully submitted that this petition should be granted.

March 4, 1943.

THOMAS D. THACHER,
Corporation Counsel of the City of
New York.

Appendix.

In 1930 the structure of the government of the City of New York was set forth in the Greater New York Charter* (L. 1901, ch. 466, as amended).

The Greater New York Charter set up a Board of Estimate and Apportionment consisting of the Mayor, the Comptroller, the President of the Board of Aldermen and the Presidents of the five boroughs within the City of New York (§226). All of these were independently elected officials. This body was vested with important powers. It was, as its name indicates, the arm of the City government having exclusive jurisdiction over expenditures and the incurring of debt and the corresponding duty of determining the methods by which money should be raised to meet City expenses and obligations.

The current expenses of the City were met out of the annual expense budget which had to be prepared and approved by the Board of Estimate and Apportionment and also approved by the Mayor and the Board of Aldermen (§226). It was provided that no contracts or obligations of a current nature could be incurred by the City without prior appropriation by the Board of Estimate and Apportionment therefor (§§1541, 1542).

A somewhat different procedure was followed with respect to capital outlays as distinguished from current expenses. All public improvements, including the acquisition of real property, had to be approved by the Board of Estimate and Apportionment. The Board determined the method of acquisition and financing of specific parcels of real property, whether to be paid for by assessment for benefit or from the City's capital funds (Chap. XVII, Title 4 and Chap. XXI). In the latter event it was the duty of the

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* It should be noted that in 1938 a new charter, known as the "New York City Charter", went into effect which, while making important structural changes, retained in the main the form of government prescribed by the Greater New York Charter.

Board to determine whether serial bonds or corporate stock should be used to pay for such improvements and, within the framework of the Charter, the maturity and other terms on which such obligations should be issued (§169).

Thus the Board had complete control not only of the amounts necessary to be raised by taxation but also of the debt-incurring power of the City. The necessity for the centralization of these powers is emphasized by the provisions of the New York State Constitution providing both for a limit upon the amount of taxes which could be raised by a municipality in any one year and also upon the total amount of municipal debt which might be incurred. Under Article VIII, §10 of the New York State Constitution, in force in 1930, real estate taxes were limited to 2% of the assessed valuation of property within the City and the total municipal debt was limited to 10% of the assessed value of such property.

The exact procedure to be followed for the acquisition of real estate by the Board of Estimate and Apportionment varied in some respects depending on the type of property to be acquired, the purpose for which it was to be used, and the decision of the Board as to the desirable method of acquisition under all the circumstances. While the usual method by which property is acquired is by condemnation, nevertheless the Board was also given the power to proceed by purchase. No matter which of these methods was used, however, it was the Board of Estimate and Apportionment which had to authorize the transaction before the City could be bound upon any agreement involving the expenditure of money for the acquisition of real property (Charter, Chapter XVII, Title 4; Chapter XXI, and §§247, 442-a, 472, 602, 605-o). This is inherent in the very nature of the structure of the City government under the Greater New York Charter and a most necessary protection for the taxpayers of the City who are ultimately compelled to pay the bills.

Appendix.

The care with which the Greater New York Charter safeguarded the expenditure of public moneys and the incurring of public debts is paralleled by its provisions with respect to the method of redemption of such public obligations and the protection of the City's creditors. Chapter VI, Title 4 sets up various sinking funds for the redemption of securities issued by the City of New York, the principal one of these being known as "The Sinking Fund of The City of New York" (§206). A Board of Commissioners of the Sinking Fund was set up, consisting of the Mayor, the Comptroller, the President of the Board of Aldermen, the Chairman of the Finance Committee of the Board of Aldermen and the Chamberlain of The City of New York, who are in effect trustees for the benefit of the public security holders (§204). It should be noted that the composition of this Board is very different from that of the Board of Estimate and Apportionment.

The Charter placed in the hands of the Commissioners of the Sinking Fund the exclusive power to sell real property owned by the City. This is because, in effect, the real property of the City is a part of the security for the redemption of these obligations. It is carefully provided that all such sales must be at public auction after appropriate public notice. The proceeds of such sales are required by law to go either into the sinking fund itself or into a special fund known as "The Real Property Fund", which can be used only for limited purposes (§205). Nowhere does the Charter give the Sinking Fund Commissioners any power to deal with the purchase of real property and such matters are entirely outside of the scope of their functions.* Their functions are limited to the administration and extinguishment of existing public debt and the sale of real property as a corollary thereto.

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* There is one exception in the Charter. Under §822 of the Charter, this body, in conjunction with the dock commissioner, was empowered to purchase one specific kind of property only—wharf property. But even in this case, the power to make the necessary appropriation belonged to the Board of Estimate and Apportionment.

INDEX

CITATIONS

517737—43——1

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OCTOBER TERM, 1942

No. 793

THE CITY OF NEW YORK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 384–405) is reported in 45 F. Supp. 226. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 415–431) is reported in 131 F. (2d) 909.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 26, 1942. The petition for a writ of certiorari was filed on March 5, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Act of the Legislature of the State of New York of February 27, 1931, authorized the Commissioners of the Sinking Fund of New York City to adopt the agreement between the United States and the City of New York binding the City to pay a proportionate share of the cost to the United States of the site for the new Post Office in New York City.

2. Whether the Act as interpreted by the court below contravened Article III, Section 16 of the Constitution of the State of New York.

3. Whether, apart from the Act, a valid and enforceable agreement existed between the United States and the City of New York for payment by the City of a proportionate share of the cost of the site in question.

4. Whether the City is estopped from claiming the absence of an enforceable agreement.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Article III, Section 16 of the New York Constitution provides:

> No private or local bill, which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.

The Act of the Legislature of the State of New York, approved February 27, 1931 (N. Y. Sess. L. 1931, c. 39), provides:

AN ACT authorizing the City of New York to sell and convey to the United States government certain real property within the borough of Manhattan of such city.

Became a law February 27, 1931, with the approval of the Governor. Passed, on emergency message, by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The city of New York is hereby authorized to sell and convey to the United States government such lands and premises and rights and easements therein located in the area bounded by Foley park; Park street; Pearl street; New street and Duane street in the borough of Manhattan, city of New York, owned by the city of New York as may be required by the United States government.

§ 2. Such sale and conveyance shall be on such conditions and such terms as in the judgment of the commissioners of the sinking fund shall be deemed proper.

§ 3. The land so transferred to be used by the United States government for the construction and erection of a new federal court house in and for the southern district of New York, in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site

in said borough by the United States government for the construction and erection of a new postoffice building.

§ 4. This act shall take effect immediately.

STATEMENT

By deed of April 11, 1867, the City of New York, in consideration of the sum of $500,000, conveyed to the United States a site in City Hall Park upon condition that the land and any building erected thereon be used only for a post office and courthouse, title to revert to the City upon breach of that condition (R. 34–37). The United States erected a building upon this site which was used as a post office and courthouse until October 30, 1937 (R. 19–20).

In 1930, after several years of negotiations, the City and the United States reached an agreement, described in the language of a comprehensive report by the City's comptroller (R. 200) as follows: that the Federal Government would (1) "convey to the City the old Federal Post Office building and site in City Hall Park"; (2) would "purchase from the City * * * for the sum of $2,450,000, the area described herein as a site for the new Federal court house" on Foley Square; and (3) would proceed "to acquire a new site for the Post Office on the property described as the Vesey street block, for the expense of which the City will repay to the Federal Government an amount in proportion to the area occupied by the present

Post Office building as compared with the total area of the new Post Office building site."

Proceeding upon the basis of this agreement (the existence and validity of which were sustained below but are here in issue), the United States paid the City $2,450,000 for the Foley Square property and erected a new courthouse thereon, and paid $5,056,246 for the Vesey Street property, upon which it erected a larger new post office building (R. 338–340, 344–345). In 1936, before the latter building was finished, Mayor La Guardia requested the Secretary of the Treasury to permit immediate demolition of the old Post Office building in City Hall Park (R. 330). He was advised that the Federal Government would convey the property to the City after the completion of the new building, upon payment by the City of its proportionate share of the cost of the Vesey Street site, to wit, $4,336,985.79 (R. 331–333).[1] The Mayor replied that he was "shocked, disappointed and unhappy" to hear that the United States expected to be paid by the City (R. 334).[2] The City subsequently refused to pay, and this suit was instituted by the United States for specific performance of the contract.

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[1] It is stipulated that this amount is the proportion of the cost of the Vesey Street site which the area of the old City Hall park site bears to the area of the new Vesey Street site (R. 20).

[2] The Mayor incorrectly stated that the City Hall site had been *given* to the Federal Government in 1867 on condition that it be reconveyed when not used for the specified purposes (R. 334).

By stipulation (R. 377–381) the City was permitted, during the pendency of the suit, to tear down the building and use the site for park purposes. The stipulation provides that the City will not claim the discontinuance of the use of the property as a federal court house and post office to be a breach of the deed of 1867, and that in the event the United States is denied the relief prayed for in its complaint it shall be given one year to resume the use of the premises "for a post office and court house," or either of them (R. 380).[3] The old building was thereupon demolished, and the land is now being used by the City for park purposes (R. 417).

The City now contends that there was no agreement between it and the Federal Government, that the officials of the City who purported to make an agreement had failed to comply with the requirements of the City charter, that the New York statute of February 27, 1931, did not authorize the City to make the contract, and that, if it did, it violated Article III, Section 16, of the New York Constitution. A rather full statement is necessary in order that the facts pertinent to these issues may be understood.

As long ago as 1919 the old Federal Court House and Post Office building was regarded as inade-

[3] The stipulation provides that an appropriation or authorization by Congress for a building to be used for such purposes would be deemed a resumption of use during the one-year period.

quate (R. 62–63), and the United States contemplated the erection of a new building on its site (R. 20, 62–63). In that year, and again in 1921 and 1924, representatives of the City were duly authorized by the Board of Estimate and Apportionment to negotiate with the United States for the return of the Post Office site to the City and for a grant by the City in exchange therefor, wholly or in part, of another site or sites for a new Federal building or buildings (R. 62–74). In 1928 the Secretary of the Treasury wrote the Mayor asking whether the City would sell to the United States a site in the Civic Center for a Court House, stating that this would leave for further consideration the continued occupancy of the old Post Office site by a new Post Office building (R. 74–75). During that year, on several occasions, the City offered to donate a site in the Civic Center (Foley Square) in return for the site in City Hall Park (R. 79, 83–84, 90–92). The Treasury took the position that the United States could not give up the City Hall Park site without also obtaining a new site in the vicinity for a Post Office, and proposed that if the City could provide a new Post Office site the United States would be willing to purchase the new Court House site (R. 85–86, 93–95).

At this stage of the negotiations local civic organizations headed by the Merchants' Association suggested the formula finally agreed upon, namely, that the Government purchase the Civic Center site from the City, surrender the old Post Office

517737—43——2

site to the City, and acquire the Vesey Street site (for a new Post Office) at an estimated cost of $5,000,000 for the Vesey Street site, the cost to be divided between the City and the Government, in the ratio that the area of the old Post Office site bore to the area of the new Post Office site (R. 22, 98, 100–104).

Direct negotiations between the representatives of the United States and those of the City continued. On April 30, 1930, the Commissioner of Public Works of the City recommended to the Mayor that the City should pay $3,750,000 for the old Post Office site and sell the Civic Center site to the United States for $2,700,000 (R. 106). The Under Secretary of the Treasury was advised of this plan (R. 107), and on May 12, 1930, the Secretary wrote the Mayor suggesting the following modifications of the plan: (1) that the price of the Civic Center site be fixed at $2,450,000, the value at which it had been appraised by the Real Estate Board's committee (R. 100–104) and (2) that the Vesey Street site be acquired by the United States under an agreement that the City would pay that proportion of the cost of the new site which the area of the old site bore to the area of the new site (R. 110).

As a result of the foregoing negotiations the following three letters were exchanged:

1. On June 6, 1930, the Mayor wrote to the Secretary (R. 112–113) that his letter of May 12,

1930, had received careful consideration by the members of the Board of Estimate and Apportionment in executive session and that the valuation of $2,450,000 for the Civic Center site was acceptable to them; that the Mayor had been authorized to offer to pay the Federal Government the sum of $3,750,000 for the old Post Office site and to sell to the Federal Government the Civic Center site for the sum of $2,450,000; and that the alternative suggested by the Secretary in his letter of May 12, 1930, was also agreeable to the members of the Board, namely, that the City should bear that proportion of the cost of the new Vesey Street site which the area of the old site bore to the new.

2. The Secretary replied on June 12, 1930 (R. 114–115), accepting the alternative proposition contained in the Mayor's letter of June 6, 1930, namely, that the City should bear that proportion of the cost of the Vesey Street site that the old site bore to the new; and stating that the Government would proceed with the acquisition of the Vesey Street site in such manner as it found to be to its best interests, and that it would convey the old Post Office site to the City upon payment to the United States of the City's proportion of the cost of the Vesey Street site.

3. On December 6, 1930, the Secretary wrote to the Mayor (R. 122–124) affirming the basis on which the exchange of the old Post Office site

was to be effected, advising him that the Department was unsuccessful in its efforts to procure satisfactory proposals from the various owners for the sale of the parcels comprising the Vesey Street site, and expressing the opinion that part at least of those properties would have to be acquired by condemnation. He further suggested that while the matter was pending the Department desired a formal proposal for the sale to the United States of the site in the Civic Center for $2,450,000.

The parties proceeded to confirm and perform the agreement. On June 25, 1930, the office of the Mayor issued a statement to the newspapers announcing that an agreement had been reached, and specifically stating that after a series of conferences in the executive sessions, the Board of Estimate had agreed upon the proposal. The letter of June 12, 1930, was set out in the statement and printed in the newspapers, and the proportionate cost of the Vesey Street site was set forth (R. 371–376). Congressional authorization to execute and perform the agreement was sought and obtained. Act of July 3, 1930, c. 846, 46 Stat. 860, 901. On January 21, 1931, the formal proposal for the sale of the Civic Center site to the United States was forwarded to the Secretary (R. 130–140).

In the meantime, the City procured the passage of the bill which, following an emergency message

from the Governor, became the Act of February 27, 1931, c. 39, N. Y. L. 1931. The Act authorized conveyance of the new court house site to the United States "in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site in said borough by the United States government for the construction and erection of a new postoffice building." Representatives of the City, in urging the passage of the bill before the New York Legislature, pointed out that its purpose was to permit the Federal Government and the appropriate officials of the City to carry out the plan agreed upon for the demolition of the old Federal building located at the southerly end of City Hall Park (R. 145, 146). On March 19, 1931, the Assistant to the Mayor transmitted a copy of this bill to the Secretary (in the precise form in which it had been enacted), stating that it "is now a law, so that there is no longer any legal obstacle to the consummation of the agreement between the City and the Treasury Department" (R. 152).

On May 11, 1931, the City's proposal of January 21, 1931, for the sale of the Civic Center site was accepted by the United States (R. 157–159), and the acceptance was transmitted by the Mayor to the City Commissioners of the Sinking Fund (R. 174), who referred it to the City Comptroller for report

(R. 181). The Acting Comptroller then prepared and submitted to the Commissioners of the Sinking Fund a report dated June 26, 1931, which reviewed the entire negotiations, setting forth verbatim the letters of June 6, June 12, and December 6, 1930 (R. 181–214). The report characterized the correspondence as an agreement which included the City's obligation to pay to the United States a proportionate share of the cost of the Vesey Street site (R. 200). The resolution of the Board of Commissioners, adopted July 1, 1931 (R. 179–181, 202–214), recited the terms of the general agreement, including the obligation of the City to pay its proportionate share of the cost of the Vesey Street property (R. 202), and authorized the conveyance of the new Court House site for the sum of $2,450,000, upon the condition that the United States vacate and surrender to the City the present Post Office site in City Hall Park pursuant to the provisions of the general agreement reached by the parties (R. 214). On July 7, 1931, the Assistant to the Mayor transmitted copies of the resolution to the Assistant Secretary of the Treasury (R. 216), to the Board of Estimate (R. 215), and to each member of the Board individually (R. 24). At the meeting of the Board on September 25, 1931, the resolution was ordered filed (R. 238).

On July 14, 1931, the Corporation Counsel of the City wrote to the Assistant Secretary of the Treasury enclosing a copy of the resolution of

the Commissioners of the Sinking Fund, and stated that the Commissioners deemed it advisable that the general agreement reached by the parties be reduced to writing (R. 230–231). A draft agreement was enclosed (R. 232–235). The draft provided that the United States should remove the old Post Office building and deliver to the City a good and marketable title to the site. On July 31, 1931 (R. 236–237), the Assistant Secretary of the Treasury advised the Corporation Counsel that with respect to the removal of the old Post Office building the agreement provided merely for the conveyance of the building and the site and suggested that removal be arranged by the City. He added that the United States could deliver a quitclaim deed only, which would be sufficient in view of the fact that the original conveyance from the city to the United States was only of a base or conditional fee.

After further correspondence and conferences (R. 253–264, 279–284), the Civic Center site was conveyed to the United States for a total consideration of $2,450,000 which was paid to the City by the United States. In 1930, the United States proceeded to acquire the Vesey Street site by purchase and condemnation. Twenty-two parcels were purchased in 1931 and the remaining two parcels were acquired in condemnation proceedings in 1933 and 1934 at a total cost for all parcels of $5,056,246 (R. 338–340). The United

States then proceeded to erect the new Post Office building upon the Vesey Street site which it occupied on or about September 31, 1937 (R. 344–345).

Then occurred the transactions referred to at pages 5–6, *supra*. After the United States had paid for the two new sites and constructed the two new buildings, the Mayor requested the United States to demolish the old building, but refused to pay the City's proportionate share of the cost of the Vesey Street site.

On these facts, the District Court found that, despite the looseness of the proceedings and the absence of a formal document, "if the complete picture is looked at, it is inconceivable that one would deny the existence of a solemn agreement between the United States and the City of New York" (R. 393, 398). The court further found, on the one disputed issue of fact, that the Board of Estimate and Apportionment did consider and approve the terms of the agreement, and that the agreement had been lawfully made on the part of the City (R. 399, 401, 406). He accordingly entered judgment for the United States without finding it necessary to pass on the other questions presented.[4]

[4] The court found that the City was not liable for the cost of demolishing the old Post Office building, and accordingly deducted this amount from the City's liability to the United States (R. 404). The Government did not challenge this ruling.

The Circuit Court of Appeals also found that the parties had made an agreement (R. 426–428). Although it disagreed with the view of the court below that the approval of the Board of Estimate and Apportionment had been shown, it held that the Act of February 27, 1931, had manifested legislative approval of the agreement and thereby superseded the provision of the City charter requiring the approval of the Board (R. 429–431).

ARGUMENT

In this case the City is seeking to repudiate its obligations under the agreement with the United States after the United States has fully performed. If the City is successful, it will have obtained for itself the site of the old Post Office building without cost, and at the same time caused the United States to spend seven and one-half million dollars for other sites instead of building on a site which it already owned.[5] This indefensible result is attempted to be justified on the ground (1) that there never was an agreement, (2) that if there was an agreement between the Mayor and the United States it is unenforceable against the City, since it was not approved by the

[5] Although the United States has the right, if it loses this case, to repossess the old Post Office site on condition that within a year it build, or decide to build, a new structure for court house or post office purposes, this right is of little value in view of the fact that the Government has just completed two large buildings for those purposes in the immediate vicinity.

Board of Estimate as required by the city charter, and (3) that the State law, which was passed at the behest of the City for the purpose of validating this very agreement (R. 135–146), is unconstitutional if it has that effect.

Whether there was an agreement between the City and United States is a question of fact which both lower courts have decided against the City (R. 393–398; 426–429). Since the City has not argued this point in its petition as an independent ground for certiorari, no necessity is perceived for discussing it here.[6]

We submit that the District Court correctly held that the agreement had been properly approved by the City, and that the Circuit Court of Appeals correctly held that, even if it had not been, any failure to comply with the city charter was cured by the Act of February 27, 1931. Furthermore, irrespective of the merits of the case, the questions as to the construction of the city charter, the conduct of the city Board of Estimate, and the meaning and validity under the State Constitution of a State law, are not of such general importance as to warrant review by this Court. Indeed, since only questions of state law are presented, a decision by this Court would not even be[7] controlling beyond the present controversy. See p. 24, *infra*.

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[6] Since the point is included in petitioner's "Questions Presented", we presume that petitioner desires to save the question if certiorari is granted on other grounds.

[7] On matters of state law this Court gives special weight to the judgment of the Circuit Court of Appeals which

1. Petitioner's claim that the contract is unenforceable against the City rests upon an alleged lack of approval by the Board of Estimate and Apportionment.[8]

This contention is based solely upon the absence of any formal record manifesting the Board's approval. It was stipulated by the parties in this case (R. 22):

> It was not the practice of the Board to have made a record of everything which took place in Executive Sessions, although at some Executive Sessions a stenographic record of some matters was made. Executive sessions could have been held without any record having been made of the fact that they were held. It was the practice of the Secretary of the Board not to include any record of anything that took place in Executive Sessions in the record of proceedings printed in the "City Record" and thereafter printed and bound. * * *

Thus it was possible for the Board to have authorized the Mayor to enter into the agreement without any formal record being made.

The only direct evidence as to whether such authority was granted was the Mayor's definite state-

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includes the state in question, especially when, as here, members of that court have had "long experience in the jurisprudence of that state". *Helvering* v. *Stuart*, Nos. 49 and 48, decided November 16, 1942, pamphlet p. 5.

[8] Unless dispensed with by the Act of February 27, 1931 (*infra*, pp. 19–21), such approval was required by Sec. 442 (a) of the Greater New York City Charter, in effect during 1930 and 1931.

ment, in his letter of June 6, 1930, to the Secretary of the Treasury, that the Board had carefully considered the matter in executive session and authorized him to make the offer on behalf of the City which the Secretary later accepted (R. 112). The Mayor's statement is corroborated by the report of the Acting Comptroller, who was a member of the Board (R. 182–183); by a newspaper article of June 25, 1930, stating that the Board had agreed to the proposal (R. 371, 376); and by the fact that when the Board was advised (R. 215) that the Commissioners of the Sinking Fund had by resolution approved the agreement (R. 202–214) it merely ordered the resolution filed (R. 24, 238).

The failure of any member of the Board to object to or register dissent from the Mayor's statement, or to oppose the agreement, obviously adds weight to the direct evidence that Board approval was obtained. In the absence of evidence to the contrary (which would presumably have been introduced if it existed), these facts fully support the finding of the District Court that the evidence "compels the inference" that the Board did approve the terms of the agreement (R. 406, 400).[9]

[9] In his opinion Judge Clark stated on this point (R. 400): "First, it is noted that in his June 6th letter the Mayor said the members of the board had considered the matter in executive session and that the proportionate sharing-of-cost plan was 'agreeable' to the members. Second, it is pointed out that in all the subsequent publicity and discussion no member of the board ever raised his voice to dispute the Mayor's statements. If the board wished to act in camera,

2. The construction and validity of the Act of February 27, 1931, come into question only if the Court should find that the Board of Estimate did not approve the agreement. Even if the contract was not approved in accordance with the terms of the city charter, which is an act of the New York Legislature, the charter requirements could be superseded by a special legislative enactment.

The Act of February 27, 1931, dispensed with other requirements, and authorized the City to sell and convey to the United States the Civic Center site upon such terms and conditions as the Commissioners of the Sinking Fund should deem proper. Section 3 provided that the land so transferred should be used for the construction and erection of a new federal Court House "in connection with an agreement between the city of New York and the United States government for the removal of the old federal building at the southerly end of City Hall park in the borough of Manhattan, and the acquisition of a new site in said borough by the United States government for the construction and erection of a new postoffice

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as it could legally, there was no better reporter of what had transpired than the Mayor, who presided. The Mayor's report of what had happened, never questioned by any member, is satisfactory evidence of the Board's approval." We believe that the Circuit Court of Appeals mistakenly understood Judge Clark's decision on this point to have been based mainly upon a presumption of regularity rather than upon undisputed evidence.

building." Obviously, Section 3 of the Act would be mere surplusage unless it intended to approve or to authorize the Commissioners of the Sinking Fund to approve or adopt the agreement which had theretofore been entered into. No other agreement could have been meant, and the history of the Act (p. 11, *supra*) shows that its object was to legalize the agreement here assailed.

Indeed, the various officials of petitioner so treated it. When the United States through the Treasury Department accepted the proposal of the City to sell the Civic Center site, the Board of Commissioners of the Sinking Fund referred the matter to the Comptroller (R. 181), who submitted an exhaustive report to the Board of Commissioners setting forth the entire transaction involving the purchase of the Civic Center site, the surrender of the old Post Office site to the City and the purchase agreement respecting the Vesey Street site (R. 181–201). A resolution embodying the essential provisions of the offer by the City and the acceptance by the United States was adopted by the Commissioners (R. 214). A copy of this resolution was transmitted to the Board of Estimate (R. 215), who at their meeting on September 25, 1931, ordered it filed (R. 238). The record thus leaves no room for doubt that the Commissioners of the Sinking Fund adopted the conditions theretofore agreed upon in respect

of the acquisition by the City of the old Post Office site, and made such conditions a part of the sale of the Civic Center to the United States. It is immaterial whether the action of the Board be regarded as a ratification or as an adoption of the prior agreement. In either event, the prior negotiations which had resulted in the agreement were confirmed or adopted in a manner clearly authorized by the Act, and the City thereupon became legally obligated to fulfill its part of the undertaking.

3. There is no merit in petitioner's contention (Pet. pp. 9, 10, 13) that the Act, so construed, violates Article III, Section 16 of the New York Constitution, limiting bills to the single subject matter expressed in the title. It is settled that the purpose of Article III, Section 16 of the New York Constitution, and of similar provisions found in many other state constitutions, is to prevent the inclusion of incongruous and unrelated matter in the same measure and to guard against inadvertence, stealth, and fraud in legislation. *Posados* v. *Warner, Barnes & Co.*, 279 U. S. 340, 344; *Economic Power & Construction Co.* v. *City of Buffalo*, 195 N. Y. 286, 296–298. Hence, notwithstanding the constitutional "limitation of the subject-matter to one subject," a New York statute "may embrace the carrying out of that subject-matter in various objective ways, provided the objectives are naturally connected with the

subject-matter and the title could be said to apprise the reader of what may reasonably be expected to be found in the statute." *Burke* v. *Kern*, 287 N. Y. 203, 213 (1941).[10] Moreover, the constitutional provision permits a statute to contain any provision "germane," "incidental to," or "fairly and reasonably connected with" the purpose or object set forth in the title. *Matter of Petition of United States*, 96 N. Y. 227, 239–240; *Economic Power & Construction Co.* v. *City of Buffalo*, 195 N. Y. 286, 296; *Willis* v. *City of Rochester*, 219 N. Y. 427, 433; *City of New York* v. *Village of Lawrence*, 250 N. Y. 429, 446; *Richfield Oil Corp.* v. *City of Syracuse*, 287 N. Y. 232, 240–242.[11] Tested by these standards, the 1931 Act as interpreted by the court below is valid. It embraces but one subject, namely, the entire agreement between the United States and the City of New York; the conveyance of the Civic Center site to the United States is merely one part of that agreement, as is expressly recognized by Section 3 of the Act, and the entire agreement is undeniably

[10] An argument in that case similar to the one here advanced by petitioner found acceptance only by a dissenting minority, *id.* pp. 223–224.

[11] In this recent case, the New York Court of Appeals held that under a title mentioning public works, it was proper to include provisions for condemnation and special assessment, since "the problem of paying for public improvements is directly linked with that of the authority of a municipality to construct such improvements." The present situation would seem to be analogous.

"fairly and reasonably connected with" the sale of the Civic Center site.

4. The decision below can also be supported on the ground of estoppel, all the elements of which are clearly present.[12] The Board of Estimate, through its presiding officer and other qualified officials, represented to the Government that the Board had approved the agreement. The Government relied upon those representations and expended many millions of dollars in performing the contract. This was disadvantageous to the Government, for the old site was a desirable one for the construction of a new Post Office building and the government consented to the acquisition of a different site only at the insistence of petitioner's officials.[13] Applicable New York precedents exist for estoppel in similar circumstances. *Moore* v. *Mayor,* 73 N. Y. 238, 245. It is only where there is a total lack of power in the City

[12] The lower courts found it unnecessary to pass on this question.

[13] There can be but little doubt that the new Post Office would have been constructed on the old site had not the City agreed to bear most of the cost of the new site. The new Post Office building now has been constructed on a different site as has the new Court House building. The old site is no longer needed by the United States, and it is not possible to restore the United States to the position which it formerly occupied unless the title of the United States to the old Post Office site were relieved of any restrictions as to its use. (See pp. 6, 15 n., *supra.*) In that event, it would have a marketable value of $7,000,000 (R. 102). It is, of course, obvious that petitioner would not agree to this modification, since its object is to retain the property for park purposes without paying for it.

that the doctrine of estoppel is inapplicable. *Moore* v. *Mayor, supra,* 245–248; cf. *City of Los Angeles* v. *Borax Consolidated,* 102 F. (2d) 52, 57, 58 (C. C. A. 9); 3 McQuillin, *Municipal Corporations* (2d ed. 1928) § § 1357, 1358.

5. The question is not one of general importance nor is there any dispute as to the applicable law. The court below, after carefully considering the charter of New York City and the applicable statutes and decisions of the New York courts, undertook to fashion therefrom the proper rule of New York law applicable to the instant case. Any review by this Court would necessarily be of the same character, and its decision on questions of New York law would not be controlling beyond the present controversy. The issuance of a writ of certiorari merely to ascertain the New York law is, we submit, not warranted where the ruling of both courts below upon the state law finds substantial support in state court decisions,[14] especially since the object of the petition is to have state legislation declared in violation of a state constitution.

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[14] If the court below had failed to apply New York law, reversal by this Court upon writ of certiorari presumably would be followed by a remand to the lower courts for ascertainment and application of the New York law. Cf. *Klaxon Co.* v. *Stentor Co.*, 313 U. S. 487, 498.

CONCLUSION

The decision below is correct and presents no question of general importance. There is no conflict of decisions. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
SIDNEY J. KAPLAN,
DAVID L. KREEGER,
Special Assistants to the Attorney General.
WILLIAM S. WARD,
PAUL A. SWEENEY,
ROBERT L. STERN,
Attorneys.

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